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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 239

CHARLES PAUL, DIRECTOR OF AGRICULTURE OF THE STATE OF CALIFORNIA, AND STANLEY MOSK, ATTORNEY GENERAL, STATE OF CALIFORNIA, APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

MEMORANDUM FOR THE UNITED STATES IN RESPONSE TO JURISDICTIONAL STATEMENT

These two consolidated actions were instituted by the United States in the District Court for the Northern District of California to restrain the appellants, the Director of Agriculture and the Attorney General of the State of California, from enforcing California's minimum milk price regulations with respect to milk purchased by distributors from producers (*i.e.*, dairy farmers) and then sold by the distributors in fluid form or as milk products to the United States for mess hall consumption or resale at base commissaries

at three federal military installations[1] located within the territorial limits of California. The purchases by the United States from the distributors were made under contracts entered into by Army and Air Force procurement officers following competitive bidding, as required by armed service procurement regulations and procedures promulgated under 10 U.S.C. 2301, *et seq.* The case was heard by a three-judge court because it involved the constitutionality of the California Milk Stabilization Act as applied to the sales from the producers to the distributors and the subsequent resales to the United States.

In pertinent part, the California statute, enacted in 1935, requires that the State Director of Agriculture prescribe minimum prices at which distributors may purchase milk from producers (Cal. Ag. Code, Sections 4246, 4247, 4281) and at which the distributors can resell to wholesalers and retailers (Cal. Ag. Code, Sections 4351, 4352, 4353). Under Section 4410 of the Code, any person who violates any provision of the Act or any order of the Director is guilty of a misdemeanor and is subject to a civil penalty. See also Section 4361.

Prior to December 1959,[2] milk was purchased by distributors and resold to the United States at Travis,

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[1] Travis Air Force Base (Travis), Castle Air Force Base (Castle), and Oakland Army Terminal (Oakland).

[2] In 1943 California attempted to apply its Milk Act to sales made upon federal enclaves. The statute as thus applied was held unconstitutional. *Pacific Coast Dairy, Inc* v. *Department of Agriculture*, 318 U.S. 285; *Consolidated Milk Producers* v. *Parker*, 19 Cal. 2d 815, 123 P. 2d 440.

Castle and Oakland at prices below the minimum prices prescribed by the Director of Agriculture for such sales (R. 14, 30, 119, 149–151, 193, 227, 993). In early 1960 appellants filed actions in various state courts seeking injunctive relief and civil penalties against the milk producers and distributors who were involved (J.S. 5). Appellants also instituted declaratory judgment actions in the District Court for the Northern District of California against federal procurement officers at Travis, seeking a determination of the State's right to enforce the minimum price regulations with respect to sales consummated at that installation (J.S. App. 31).

The United States then brought these actions to enjoin appellants from attempting to enforce the California Milk Stabilization Act with respect to milk sold to these three bases.[3] The government contended that the Supremacy Clause of the Constitution precluded application of the California Milk Act to the purchase of such milk either by the distributor or by the government in view of the federal competitive bidding policy and procedures expressed in 10 U.S.C. 2301, *et seq.*, and in the Armed Forces Procurement Regulations, paras. 1–301, 1–302.2, 3–101 and 3–801.1, and in Army Procurement Procedure, para. 3–101. It was further argued that the minimum milk prices established by the Director of Agriculture could not be applied to purchases made for the three federal installations be-

[3] Suits involving Camp Pendleton and Mather Air Force Base await the disposition of this action (J.S. App. 30).

cause the sales were consummated on lands under the exclusive jurisdiction of the federal government.

After an extensive review of the applicable facts and statutes, the district court held in a memorandum opinion, dated November 29, 1960, that the California Milk Stabilization Act could not be applied to these purchases because they were made on lands under exclusive federal control, and because the Milk Act had not been assimilated as federal law. It also held that the State price regulations were unconstitutional on the ground that they conflicted with the expressed federal policy of competitive bidding, and because the statute imposed penalties on the federal government if it purchased milk at less than the established minimums.

On April 17, 1961, the district court entered final orders enjoining appellants from enforcing against producers and distributors of milk, and against the United States, the state minimum producer price, wholesale price, or retail price regulations with respect to purchases for Castle, Travis, and Oakland. On July 3, 1961, a Justice of this Court stayed the parts of the injunctions which enjoined appellants from enforcing against producers or distributors of milk the minimum producer price regulations promulgated by the Director of Agriculture for resale by the distributors to the three bases.[4]

Since the Jurisdictional Statement was filed, the federal government has reviewed its policy with respect to California milk regulation in procuring milk

[4] The government did not oppose the motion for a partial stay of the district court injunction.

and milk products for military installations. The case now stands in a new and different posture which, we believe, permits a summary disposition.

I

There is no longer any necessity for the Court to consider whether appellants can constitutionally enforce the established California minimum *producer* prices with respect to milk farmers selling to distributors for processing and ultimate resale to the United States. The federal government, while not conceding that California can regulate producer prices, over the objection of the federal government, where the milk is to be resold to the United States, has concluded as a matter of procurement policy not to assert immunity from these minimum prices but to accede to full compliance with those requirements. Accordingly, the United States now suggests that, without further briefing or argument, the Court remand the cause to the district court for a deletion of that part of the final order enjoining enforcement of the minimum producer price regulations as to milk sold to distributors for resale to the federal government.

II

The United States continues, however, to oppose any attempt by California to regulate the price at which *distributors* may sell milk or milk products to the military installations involved. In our view, the district court was clearly correct in enjoining enforcement of the minimum distributor prices because the sales between the distributors and the United States

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are consummated on territories under exclusive federal jurisdiction; so far as we are aware, all of these distributor sales take place on the federal enclaves. As to this aspect of the case, we submit, therefore, that the judgment below should be summarily affirmed.[5]

In *Pacific Coast Dairy* v. *Department of Agriculture*, 318 U.S. 285, this Court held that California could not constitutionally apply its minimum distributor price restrictions to purchases made by the United States on lands under exclusive federal jurisdiction. The California Supreme Court has also ruled that the Milk Act is inapplicable to transactions concluded on federal enclaves. *Consolidated Milk Producers* v. *Parker*, 19 Cal. 2d 815, 123 P. 2d 440. These holdings rest, of course, upon the established principle that a State cannot regulate conduct on lands over which the United States has acquired exclusive legislative jurisdiction under Article I, Section 8, Clause 17 of the Constitution. See, *e.g.*, *Fort Leavenworth Railroad Company* v. *Lowe*, 114 U.S. 525; *Arlington Hotel Co.* v. *Fant*, 278 U.S. 439; *United States* v. *Unzeuta*, 281 U.S. 138; *Surplus Trading Co.* v. *Cook*, 281 U.S. 647; *Standard Oil Co.* v. *California*, 291 U.S. 242; *Collins* v. *Yosemite Park & Curry Co.*, 304 U.S. 518.

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[5] In the event that probable jurisdiction is nevertheless noted, the federal government will also argue that the California Milk Act is unconstitutional insofar as it compulsorily applies to distributor sales to the federal government because it prohibits, on threat of criminal and civil penalties, federal procurement officers from purchasing milk at less than the state-established minimums under the Armed Services Procurement Act and regulations issued thereunder. See *Public Utilities Commission of California* v. *United States*, 355 U.S. 534.

Appellants argue, however, that *Pacific Coast Dairy* is inapplicable because the lands on which the sales are consummated at Oakland, Castle and Travis are not under exclusive federal jurisdiction. This contention was thoroughly considered by the district court which, on the basis of exhaustive findings, concluded that the United States has acquired exclusive jurisdiction over the portions of these bases on which the sales are made. This conclusion is, we think, not open to serious challenge. Moreover, appellants' contentions with respect to it turn in large part upon the construction of various provisions of California statutes which, *ex hypothesi*, have only local application. There is no need for review by this Court.

A. TRAVIS AIR FORCE BASE

The United States can acquire exclusive jurisdiction over lands located in a State either by purchasing the land with the consent of the State (United States Constitution, Art. I, Sec. 8, Cl. 17)[6] or by a cession of such jurisdiction by the State. The latter method was first recognized in 1885 in *Fort Leavenworth Railroad Company* v. *Lowe*, 114 U.S. 525. See,

[6] Article I, Section 8, Clause 17, provides that the Congress shall have power

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—

generally, *James* v. *Dravo Contracting Co.*, 302 U.S. 134; *Collins* v. *Yosemite Park & Curry Co.*, 304 U.S. 518.

In 1942–1943, the United States acquired the Travis areas, upon which sales and deliveries of milk are made, by the purchase-with-consent method. J.S. App. 41; R. 127, 991, 993, 1062. At that time, California had one statute, enacted in 1872, which consented to the acquisition of exclusive jurisdiction by the United States pursuant to the Constitution, Art. I, Sec. 8, Cl. 17,[7] and a separate statute ceding exclusive jurisdiction to the United States over all lands "which may hereafter be ceded or conveyed" to the United States.[8] The latter statute was enacted in 1897,[9] shortly after the decision in the *Fort Leavenworth* case recognizing the validity of such a cession, *supra*. See J.S. App. 38–40.

Although appellants recognize that the federal government acquired Travis by the purchase-with-consent method, they contend that the United States did

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[7] Section 34 of the Cal. Pol. C. provided in pertinent part:

> The legislature consents to the purchase or condemnation by the United States of any tract of land within this state for the purpose of erecting forts * * *.

[8] Chapter 56 of Cal. Stats. 1897 provided in pertinent part:

> The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes: *provided* that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated * * *.

[9] The State first enacted a statute concerning the cession of jurisdiction in 1891. (J.S. App. 40.)

not thereby acquire exclusive jurisdiction over that installation because the federal government admittedly did not comply with the proviso of the 1897 *cession* statute that the state will not "cede" exclusive jurisdiction over lands "ceded or conveyed" to the United States unless the United States files a description and map of the lands with the county recorder. However, the plain language of the cession statute, as well as its legislative history, discloses that that statute only applies to lands "ceded or conveyed" to the federal government. The United States, in order to acquire exclusive jurisdiction by the separate purchase-with-consent method, does not have to comply with the provisions of the cession statute. The California Attorney General has previously recognized this clear distinction in Report of the California Attorney General, *Jurisdiction Over Federal Enclaves in California, 1958*, 3, 42, 72–73, and in 23 Ops. Cal. Attorney General 14.

James v. *Dravo Contracting Co.*, 302 U.S. 134, 143, upon which appellants rely for the proposition that a cession statute may qualify a separate consent statute, is wholly inapposite. *James* did not involve, as here, two separate statutes enacted at different dates to provide for different modes of transferring exclusive jurisdiction to the federal government. Instead, *one* section of the West Virginia Code, in succeeding paragraphs, gave the state's consent to the purchase of land by the United States, permitted municipalities to give land to the United States, and then ceded concurrent jurisdiction "over any land so acquired." As the Court found, the third paragraph, by specifi-

cally referring to "any land so acquired" by the United States, manifestly was intended to condition the transfers described in the first two paragraphs of the same section. 302 U.S. at 145.

B. OAKLAND ARMY TERMINAL

Appellants' argument that the United States did not acquire exclusive jurisdiction over Oakland when it purchased those lands in 1950 with the consent of California (J.S. App. 35) is closely akin to the statutory contention it makes with respect to Travis.

By 1950, Section 126 of the California Government Code had replaced Section 34 of the Political Code, *supra,* p. 8. Section 126 provides in pertinent part:

> Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law; * * *."

The various express reservations are described at J.S. App. 35–37. Also, the 1891 and 1897 cession statutes had been codified into Sections 113 and 114 of the Government Code (J.S. App. 40). Section 113 provided in pertinent part:

> The State reserves the administration of the criminal law of the State with respect to any land over which any jurisdiction has been or may be ceded or conveyed to the United States * * *.

Appellants do not deny that the United States acquired Oakland by the purchase-with-consent method nor that it complied with the express conditions of Section 126. They assert, however, that the State's consent was also subject, under Section 126, "to any other conditions or reservations prescribed by law," and that Section 126 thereby incorporated by reference the provision of Section 113 that the State "reserves the administration of the criminal law of the State with respect to any land over which any jurisdiction has been or may be ceded or conveyed to the United States." Appellants then contend that the "reserv[ation of] the administration of the criminal law of the State" in the cession statute was a reservation of the State's criminal jurisdiction over such lands and, therefore, that the State thereby reserved the right to enforce the penal provisions of the Milk Act.

As we have shown, *supra*, pp. 8, 10–11, Section 113 is a cession statute and its provisions, by its own terms, only apply to lands "ceded or conveyed" to the United States. They do not apply to lands, such as Oakland, which were purchased with the consent of the State and are within the express mandate of Article I, Section 8, Clause 17 of the Constitution. Furthermore, the phrase "the administration of the criminal laws" appeared in the original cession statute, Cal. Stats. 1891, ch. 181, p. 262, and has been interpreted to mean that the State reserves only the right to serve criminal process, and not as a general retention of criminal jurisdiction. *United States* v. *Watkins*, 22 F. 2d 437, 438–439 (N.D. Cal.).

C. CASTLE AIR FORCE BASE

The only area at Castle on which sales of milk are presently consummated is an 18-acre tract of land denoted as Tract A (J.S. App. 43; R. 191, 231). This area was originally acquired by the United States in 1942 pursuant to the Lanham Act, 54 Stat. 1125, 42 U.S.C. 1521, *et seq.*, for emergency civilian housing. Section 10 of the Lanham Act provided that the United States could not acquire exclusive jurisdiction over property acquired pursuant to that Act. Tract A, however, was transferred to the War Department later that same year,[10] and in 1943 the War Department obtained a deed to the property and fulfilled the requirements of the California consent-to-purchase statute (J.S. App. 44–46).

Appellants insist that the provision of Section 10 of the Lanham Act preventing the United States from acquiring exclusive jurisdiction over property purchased under that Act permanently "attached" to Tract A so that, even though it was subsequently purchased by the United States with the consent of California and for the purposes enumerated in Article I, Section 8, Clause 17 of the Constitution, the United States did not acquire exclusive jurisdiction over the

[10] This transfer of jurisdiction was made pursuant to Section 4 of the Lanham Act, 56 Stat. 12:

> *Provided further*, That the Administrator may, in his discretion, upon the request of the Secretaries of War or Navy transfer to the jurisdiction of the War or Navy Departments such housing constructed under the provisions of this Act as may be considered to be permanently useful to the Army.

tract. The court below correctly disposed of this footless argument (J.S. App. 46):

> We are of the opinion, however, that after the transfer of Tract A from the National Housing Administrator to the War Department, pursuant to 42 U.S.C.A. Section 1524, for military purposes, statutory provisions of the Lanham Act, including Section 10, became inapplicable to the land. The War Department would not be subject to statutory provisions pertinent only to lands held by the National Housing Agency for Lanham Act purposes. Upon its acquisition of Tract A for its own military purposes the War Department held it subject only to statutes pertinent to its own powers and purposes.[11]

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[11] Appellants also argue alternatively that the Milk Act was assimilated as federal law on Oakland, Castle and Travis because these installations were acquired after the enactment of the Milk Act, citing *Pacific Coast Dairy* v. *Department of Agriculture*, 318 U.S. 285, 294. However, because a State cannot legislate with respect to a federal enclave unless it specifically reserved that right when it transferred jurisdiction to the United States, only the local law as it existed at the time of the acquisition is assimilated, and not subsequent amendments to that law. *Arlington Hotel Co.* v. *Fant*, 278 U.S. 439; *James Stewart & Co.* v. *Sadrakula*, 309 U.S. 94, 99–100. Appellants do not seek to enforce the Milk Act and regulations as they existed in 1943 (the date of the acquisition of exclusive jurisdiction over Travis and Castle) nor in 1950 (Oakland), but desire to impose the present price regulations.

Moreover, it is our position that the Milk Act is inconsistent with the federal policy of purchasing on a competitive basis—insofar as sales directly to the government are concerned—and therefore was never assimilated as federal law. Additionally, the federal government has enacted, in the Armed Services Procurement Act and Regulations, a comprehensive scheme governing procurement of milk on these enclaves and, since the federal gov-

CONCLUSION

For the reasons stated, it is submitted that the judgment below should be affirmed, except insofar as it enjoins enforcement of the California regulations pertaining to the minimum prices at which milk may be sold by producers to distributors. The cause should be remanded to the district court with instructions to permit the United States to amend its complaint with respect to the State minimum producer price regulations and thereupon to delete that portion of the order which enjoins enforcement of the State minimum producer price regulations with respect to milk resold by the distributors to the federal government.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

DECEMBER 1961.

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ernment has exclusive legislative jurisdiction on the installations, the State Act regulating the same subject matter—*i.e.*, the purchase of milk—is preempted. Finally, assuming that the state law was assimilated on Oakland, Travis and Castle as federal law, federal enforcement officials, and not the appellants, would be responsible for prosecuting violations of it. *Johnson v. Yellow Cab Co.*, 321 U.S. 383, 392–393.

See also footnote 5, *supra*, p. 6.

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